

Westmoreland Response to FEC MUR 6658
July 14, 2016

where the Complaint originated. Both entities were purchased by Westmoreland in December of 2014, approximately two (2) years after Ms. Farrell's Complaint was filed. Westmoreland is a publicly traded company with diverse operations focused on coal mining throughout the United States and Canada.

The FEC Letter alleges that Oxford paid approximately \$5,673.89 and that Oxford Kentucky paid approximately \$712.02 for signage that stated "Stop the War on Coal – Fire Obama" and that Oxford Mining may be two of the unknown respondents associated with Ms. Farrell's claim. However, the FEC's Factual and Legal Analysis is devoid of any legal nexus to Oxford or Oxford Kentucky, or direct evidence that Oxford Mining purchased the signs at issue in Pennsylvania. Instead, the FEC's Factual and Legal Analysis focused on two (2) online articles that attempt to demonstrate that the signs in question "were distributed as early as May 2012" and that a local Pennsylvania man (Gary Dubois) "claims to have distributed 16,300 of the signs" (said articles attached hereto and incorporated herein at Exhibit A). The BuzzFeed article that the FEC cites specifically references a rally at the American Energy Corporation Century Mine in Beallsville, OH, but makes no mention of Oxford Mining or its operations nearly ninety (90) miles away. In fact, neither article references Oxford or Oxford Kentucky, and as mentioned above, the FEC's Factual and Legal Analysis does not mention Oxford Mining in any way.

Factual Background

On June 13, 2016 Oxford received a letter from the FEC alleging that Oxford Mining may be two (2) of the unknown respondents alluded to in the Complaint filed by Maria Elena Farrell, dated October 2, 2012. In the approximate four (4) years between Ms. Farrell's complaint and the FEC's letter, the entities associated with Oxford Mining were purchased by Westmoreland Coal Company in December of 2014. In the nearly eighteen (18) months since Westmoreland's purchase of Oxford Mining, many changes in the corporate structure have occurred both at Westmoreland and its subsidiaries. As a result, many employees that were with Oxford Mining in October of 2012 are no longer with the company. To that end, the continuity of knowledge and history associated with the time period of the alleged violation is tenuous.

Westmoreland's Code of Conduct and Ethics strictly prohibits the type of activities alleged in the Complaint. Specifically, Westmoreland company policy limits employees' ability to engage in political activities using company resources. *See* Westmoreland Coal Company Code of Conduct and Ethics, Political Contributions and Political Activity, January 2015 at 28 (attached hereto and incorporated herein at Exhibit B). No company funds or assets may be loaned or contributed, either directly or indirectly, to any political party or organization, or to any individual who holds or is a candidate for public office. *Id.* Employees "may not conduct personal political activity on our time or use our assets for this purpose, and no employee may ever force, direct or in any way urge another employee to make political contributions." *Id.* Therefore, the types of allegations made in the Complaint and the FEC Letter are strictly prohibited under Westmoreland policy. Furthermore, Westmoreland employees are required to confirm (in writing) their adherence

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July 14, 2016

to the policy requirements annually. Violations of Westmoreland policy can result in termination.

Legal Analysis

The Legal Analysis presented by the FEC states that the Commission found “reason to believe” that unknown respondents violated the Act, by failing to include a disclaimer on certain yard signs that stated “Stop the War on Coal – Fire Obama,” and failing to report the independent expenditures. A “reason to believe” is not a finding that any person violated the Act; rather, it merely indicates that the Commission believes a violation may have occurred. *See* 52 U.S.C. § 30109(a)(2). The FEC failed to specifically identify Oxford Mining in any of the facts asserted in their Factual and Legal Analysis associated with MUR 6658. As such, this matter should be summarily dismissed without the Commission initiating a formal investigation.

Generally speaking, at the initial stage of the enforcement process, the Commission may elect to take one of the following actions with respect to a MUR: (1) find “reason to believe” a respondent has violated the Act; (2) dismiss the matter; (3) dismiss the matter with admonishment; or (4) find “no reason to believe” a respondent has violated the Act. 72 Fed. Reg. at 12545. However, rather than finding a “reason to believe,” the Commission may vote to dismiss matters at the initial stages of an enforcement matter “due to factors such as the small amount or significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation.” *Id.* at 12546; *see also Heckler v. Cheney*, 470 U.S. 821 (1985).

Here, Westmoreland (Oxford Mining) respectfully submits that the Commission should vote to dismiss this matter at this juncture as: (1) the cumulative effect of the alleged violation in question pertaining to unknown respondents is of little significance and the amount alleged by the FEC was *de minimus*; (2) the arguments presented by the FEC center upon online “news” articles that do not reference Oxford Mining in any way, shape, or form, and; (3) substantial employee turnover has occurred since the time this complaint was originally filed nearly four (4) years ago and especially since Westmoreland acquired Oxford Mining in December, 2014, which encumbers Westmoreland’s ability to conduct a thorough investigation. Further, the type of activities alleged in the are in direct violation of Westmoreland’s Code of Conduct and Ethics for current employees.

There is applicable precedent within the FEC for the Commission to dismiss MURs such as this. *See e.g.* MUR 6429; *see also* MUR 6047. In fact, “the Commission has routinely dismissed prior enforcement matters involving alleged disclaimer violations. *Id.* Further, “[i]n prior MURs involving alleged disclaimer violations by unknown respondents, the Commission has declined to find reason to believe, and open an investigation into the unknown respondents’ identity.” *Id.* “This is true even in instances where the communications allegedly contained express advocacy.” *Id.* “And even assuming a disclaimer was required, the Commission routinely dismisses similar allegations involving non-compliance with the Act’s disclaimer requirements.” *See* MUR 6047.

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July 14, 2016

In other instances, the FEC's Office of General Counsel "has recommended that the Commission exercise its prosecutorial discretion to dismiss matters involving unknown respondents." *See e.g.*, MUR 6135, *see also* MUR 5455. Westmoreland respectfully requests the Commission vote to exercise prosecutorial discretion and dismiss this matter pursuant to *Heckler v. Cheney*.

Conclusion

The Commission is empowered to dismiss this matter as it pertains to Oxford and Oxford Kentucky. On behalf of its subsidiaries, Oxford and Oxford Kentucky, Westmoreland respectfully requests the Commission dismiss this matter at this juncture. The allegations provided within the FEC Letter reference a small monetary amount. Further, the FEC's Factual and Legal Analysis for MUR 6658 (as it pertains to Oxford and Oxford Kentucky) is inapplicable and vague as it makes no specific reference to either entity. Due to the turnover in staff at Oxford Mining that has occurred in the nearly four (4) years that have passed since the Complaint was filed with the FEC and after the acquisition of Oxford and Oxford Kentucky by Westmoreland in December 2014, a further investigation has proven difficult. Lastly, risk of subsequent violations of the Act are in contravention of Westmoreland's employment policy, which strictly prohibits use of company funds for political means. For these reasons, and those stated above, Westmoreland requests that the Commission vote to dismiss MUR 6658 as it pertains to Oxford and Oxford Kentucky.

In the alternative, if the Commission is persuaded by the uncorrelated evidence put forth by the FEC against Oxford and/or Oxford Kentucky as unknown respondents, the Commission should dismiss this matter as it pertains to Oxford Mining along with a letter of admonishment, pursuant to 72 Fed. Reg. at 12546, which allows the Commission to dismiss a matter if, among other reasons, the Commission finds the "complaint convincingly alleges a violation, but the significance of the violation is not sufficient to warrant further pursuit by the Commission."

Westmoreland is appreciative of the opportunity to address the Commission in this response. Should any questions regarding the above arise, or if you would like to discuss the matters set forth herein, please contact the undersigned at (720)-354-4488 anytime. Thank you for your attention to this matter, we look forward to resolution.

Respectfully,

Joseph M. Evers

cc:

Kamau Philbert, Office of the General Counsel
kphilbert@fec.gov

finishing his midnight shift at the mine.

"I spent a year in Iraq serving my country, and now they want to take away my job," he said.

Kevin Hughes, the superintendent at the American Energy Corporation Century Mine in Beallsville, Ohio, which organized the rally of its workers, said the reason they were protesting is simple: President Barack Obama's regulatory agenda is killing jobs.

"We want to save our jobs. We want to save this valley," he said.

Ed Good, an electrician at a local coal-fired power plant and a member of the Obama campaign's "Truth Team" dismissed the notion that there is a "war on coal," noting that coal mining jobs reached a 14-year high last year, but acknowledging that there are still problems with the Environmental Protection Agency.

Good mentioned that when Mitt Romney was governor of Massachusetts he too took a hard line on coal.

"Back then the governor was saying I'm going to shut down any plant that kills people — he was referring to a coal plant, a utility plant," he said.

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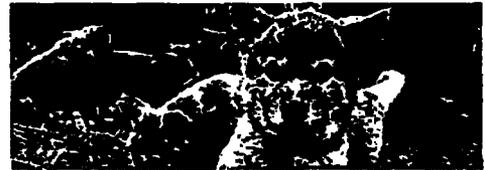


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Fort Worth, Texas

So, are Coal Miners now racists? I keep forgetting the rules....

Like · Reply · 49 · May 17, 2012 11:34am



Coal Miners have always been racist, Eh?

Like · Reply · 6 · May 17, 2012 12:27pm



Smith College

HEY RED .NOT SO BRIGHT....YOU ARE A DISGRACE TO THE ARMED FORCES YOU SO PROUDLY TOUT...I'D LOVE TO BITCH SLAP YOUR DRUNLKEN MUG...

Like · Reply · 2 · May 17, 2012 12:51pm



University of New Mexico - Los Alamos

You sure are a tough guy/gal; long distance over an internet connection. Typical Obama type, all mouth! Rich in New Mexico.

Like · Reply · 4 · May 17, 2012 1:53pm

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Utah Valley University

God bless the coal miners!

Like · Reply · 43 · May 17, 2012 11:54am



Ex-lineman due to being held together by screws. at Duke Energy

Unfortunately, they protest now, but on election day they'll follow their union leaders and vote Obama again.

Like · Reply · 8 · May 17, 2012 11:55am



id like to think.that people have wised up in the past few years. I have to believe in the people, i have to believe in the people, i have to believe,....

Like · Reply · 18 · May 17, 2012 12:22pm



Beverly Hills, California

I think the times are changing, as I don't think you would even had had these protest a little while back.

Like · Reply · 9 · May 17, 2012 12:28pm



The UMW Union supports and gives money to Obama.

Like · Reply · 5 · May 17, 2012 12:29pm

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Back door man at Arla Maes Cornbread & Biscuit House

Perhaps, Ralph Stanley, the Bluegrass Legend and Obama Supporter... will sing "O Death"...in Memory of the "Coal Industry"... while taking the Union Made Knife out of his back! LOL

Like · Reply · 15 · May 17, 2012 12:00pm

Picture a world, not too far into the future. Americans, working 80 work weeks that include the weekends, being paid less than minimum wage, whatever the employer sets the limit to be, maybe even just \$1/hr, a shoddy work environment where you don't know if you are safe on a daily basis where you don't know if there is nrrner fire



I Don't Care About Any Of These Photos Of Priyanka Chopra, But I Need Her T-Shirt In A Men's XL



The Guy Who Played Kevin Gnaapor On "Mean Girls" Is A Calligrapher Now



There's A Theory That Taylor Swift And Tom Hiddleston Are Just Shooting A Music Video



Somebody Photographed UN Trucks Inside The U.S. And Now People Are Freaking Out



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When it you breathe on a daily basis, where you don't know if there is proper fire extinguishers and fire escapes, where you get no health care, dental, no benefits of any kind, where you do not get bathroom breaks or lunch breaks, where if you work overtime, you don't get paid, you just work it. Where a woman is treated less than equal than her... See More

Like · Reply · May 17, 2012 12:29pm



· Beverly Hills, California

imagine a future, where obozo gets his way and coal mines are shut down, no nuclear power, the greens have their way and gas is cut off and your home no longer has the power to use a computer to write such a piece as you wrote.

And then you sit in your dark home and watch the leaders flying around and living the good life that your toil is paying for. And you long for the day of tea party members that want to save this country, because they knew that the bigger the government the smaller the person.

And in this world, the Jobs, Gates, Buffets and others have moved out of the country taking their wealth with them, making it even worse because as the tea party told us, the rich were paying their fair share, and even if you took all their wealth the debt would never be paid off.

Like · Reply · 7 · May 17, 2012 12:42pm



· Milledgeville, Georgia

There are labor laws that would prevent all of those injustices, unions are as useless as teets on a boar hog. The upper echelon of the unions know the gigs up and they are trying to save there phoney_baloney jobs!

Like · Reply · 4 · May 17, 2012 12:51pm



· Executive Director at MissionPoland

Coal miners

Like · Reply · May 17, 2012 12:29pm



· Works at You name it, I probably did it. Been paying taxes ever since

I was 13.

Well now, this is Great News!

Like · Reply · 2 · May 17, 2012 12:37pm



· Bronx, New York

Go figure - coal miners want to be able to pay their bills? no way! Who would have guessed that? ABO!

Like · Reply · 18 · May 17, 2012 12:40pm



· Panama City Beach, Florida

Weather they know it or not Miners are near the bottom of the 99%The mine owners and share holders have no problems with paying bills and they don't get "miners lungs" either. Miners are just this side of slave labor.

Like · Reply · May 23, 2012 10:37am



· Bronx, New York

Whatever - go vote for obama.the marxist zealot communist traitor and get it over with. Just don't complain when you are forced into skyrocketing electric rates, brown outs, etc. Shame on anyone voting for obama.

Like · Reply · 1 · May 23, 2012 10:51am



Ah, how I long for the happy medium. These coal miners were, according to the story, standing on a hill. Coal mining in neighboring West Virginia has been fought by this administration for taking the tops off so many mountains and destroying the land and water sources. Valid complaint by the Obama Administration. The MSHA inspectors in mines, however, are killing decent mines who try to run a safe shop with over-the-top fines for minor violations, the equivalent of not dotting an "i" or crossing a "t."

Like · Reply · 1 · May 17, 2012 12:58pm



HHHmmm, I distinctly remember Obama saying he wanted to make it so unprofitable that coal fired power plants would go out of business. How is that helping coal miners, or the American consumer of electricity? And then he shovels our money by the bucketful to failing companies that are "green" solar or wind energy. Obama is a huckstar, and his spokesmen of the various types need to be tarred and feathered when they go out in public.

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Collections • Coal Industry

Pa. coal region backing off its Democratic bent

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Gary DuBois, of Waynesburg, says he has given out 16,300 yard signs. The GOP blames Obama policies for a drop in coal demand. MICHAEL S. WIRTZ / Staff (MICHAEL S. WIRTZ / Staff Photographer)

Instantly Better.

By Andrew Maykuth, Inquirer Staff Writer

POSTED: October 28, 2012

WAYNESBURG, Pa. - Not long ago, two things held true in Greene County: Coal ruled, and a Democratic presidential candidate could count on solid voter support.

Coal still holds its own. President Obama, not so much.

Across mining regions, the Republicans have mounted a relentless campaign blaming the Obama administration's environmental policies for a decline in coal demand. It has struck a chord in Greene County, judging from the ubiquitous yard signs: "Stop the War on Coal - Fire Obama."

Here in Pennsylvania's southwestern corner, where coal-mining has been the economic foundation for more than a century, most of the population still identifies with the Democratic Party - 63 percent of 22,659 registered voters. Even Ronald Reagan could barely muster 40 percent of the vote in Greene County.

But support for Democratic presidential candidates has weakened in recent decades in this socially conservative region. In 2004, George W. Bush was the first Republican since Richard Nixon to win Greene County.

John McCain edged Obama by 60 votes in 2008, when members of the United Mine Workers of America went door-to-door on Obama's behalf.

But this year, the powerful UMWA has declined to endorse any candidate amid the assault-on-coal campaign. The union's neutrality is essentially a win for Republican Mitt Romney.

"Our members really feel stuck between a rock and a hard place," said Phil Smith, communications director for the mine workers.

"For the first time, our members don't feel a Democratic president is on their side," he said. Nor is Romney regarded as a friend of labor.

For the local GOP, the Nov. 6 election represents an opportunity to make inroads.

"I don't think Obama has a chance this time," said Archie Trader, the lone Republican representative on the three-member county commission. "Coal is our livelihood."

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The erosion of support for Obama in coal country may be insufficient for the president to lose the vote in Pennsylvania. Indeed, in areas outside of the mining regions, where coal is demonized for its emissions rather than lauded as a source of affordable electricity, Obama's embrace of renewable energy may trump concerns about coal.

A recent energy poll by the University of Texas at Austin found that 62 percent of respondents said they were more likely to vote for a candidate who said he would increase funding for scientific and university research into new energy technologies. Forty percent said they would be more likely to vote for a candidate who supported decreasing the use of coal.

But coal still has a strong constituency, as well as hefty industry campaign support. And the GOP has turned up the heat in the battleground states of Ohio, Virginia, and Colorado, where coal is a significant employer. Its struggles are also emblematic of claims that Obama has overregulated industry in general.

In Pennsylvania, more than 40,000 people are employed by the coal industry, which contributes more than \$7 billion to the economy, according to the Pennsylvania Coal Alliance. Coal production is down more than 6 percent from last year.

Obama's supporters argue that the decline in coal demand is mostly caused by competition from cleaner-burning natural gas, rather than onerous regulations imposed by the U.S. Environmental Protection Agency.

Greene County stands to gain from either coal or natural gas. The county is the state's sixth largest producer of Marcellus Shale natural gas, part of a nationwide boom from hydraulic fracturing that has driven down the price of natural gas. Greene County has 324 producing Marcellus wells and recently received \$3.1 million from the state's new impact fee on gas wells.

But coal contributes more to the tax base. Property tax on coal accounts for 38 percent of the Greene County budget or about \$3.5 million last year. Coal generates an additional \$9.5 million in taxes for schools, said H. John Frazier, the county's chief assessor.

Though mining now is mechanized and employs fewer people than it did when the steel industry was strong, it is thoroughly ingrained in the culture here. Almost everybody is related to a miner. The county still hosts the Bituminous Coal Festival, which culminates with the annual crowning of the Coal Queen.

"We're proud of our jobs," said David Moore, a fourth-generation miner. "We like to say we work in the dark so you don't have to."

Moore works at the Emerald Mine outside Waynesburg, which is owned by Alpha Natural Resources Inc. The Virginia-based company announced plans in September to lay off 1,200 workers and shut down eight mines, including the Dora No. 8 deep mine near Punxsutawney.

Alpha President Kevin Crutchfield blamed the shutdowns partly on "a regulatory environment that's aggressively aimed at constraining the use of coal." The company has actively supported the Romney campaign.

The dilemma facing unionized coal miners is plain at the Emerald Mine, one of two facilities that Alpha owns in Greene County that together employ 1,400 people. They are excavating coal from the famous Pittsburgh seam, a seven-foot thick layer more than 500 feet below the surface.

Smith, the UMWA's spokesman, said older miners and retirees tended to support Obama - they are more concerned about health care and the preservation of Medicare. Younger miners are more concerned about the preservation of their jobs and find Romney's support for the industry more appealing.

Anthony Swetz, 55, president of the mine workers local, said miners were conflicted without official union guidance. "A lot of members are asking, 'If there's not an endorsement, which way do I go?'"

He said government now regulated almost every aspect of mining, including workplace safety. "We don't want to do anything that damages those protections," he said.

But what good are workplace protections if there is no market for coal?

"Am I going to have a job in five years?" asked Travis Hartley, 29, a third-generation miner and a member of the union's safety committee. "I think that's where a lot of disillusionment is. I feel coal is still very much part of our energy picture."

Contact Andrew Maykuth
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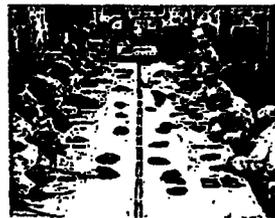
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EXHIBIT B

Political Contributions and Political Activity

Policy Overview

We encourage you to engage in political and other civic activities as an individual citizen, and respect your right to use your own time and resources to support the political activities of your choice. However, we operate under legal limitations on our ability to engage in political activities. None of our funds or assets may be loaned or contributed, either directly or indirectly, to any political party or organization, or to any individual who holds or is a candidate for public office. This does not prohibit you from making political contributions from personal funds or from expressing individual views with respect to legislation or political matters. You may not conduct personal political activity on our time or use our assets for this purpose, and no employee may ever force, direct or in any way urge another employee to make political contributions.

The following are examples of activities that are illegal under certain laws that prohibit corporate political contributions:

- Contributions by an employee that are reimbursed through expense accounts or in other ways;
- The purchase of tickets for political dinners or fundraising events using our funds; and
- Indirect political contributions by us through suppliers, customers or agents.

Core Requirements

- Never use our assets, whether your time at work or our equipment or supplies, in furtherance of personal political activity.
- Do not use our funds or assets to make contributions to a political candidate, or to otherwise benefit a candidate or political party.
- We will not reimburse employees for personal political activity.
- Never identify yourself as our representative when communicating your personal views on political ideas or elections.